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Tax Newsletter

February 2015

For reference, internal circulation only

In this issue:

NEW DOCUMENTS	3
Amendments to certain regulations on Corporate Income Tax (“CIT”), Value Added Tax (“VAT”), and Personal Income Tax (“PIT”)	3
Companies who are not credit institutions are not allowed to use cash in loan borrowing, lending, and loan repayment transactions	4
GUIDING DOCUMENTS	5
Corporate Income Tax (CIT)	5
Guidance on determining the deductible expenses for CIT purposes	5
Tax incentives for the expanding investment project in industrial zones, operating after 2013	6
Guidance on determining the time of CIT deficiency declaration in 2013	6
Personal Income Tax (PIT)	7
PIT finalization for foreigners who have departed	7
The labor contracts of 03 months or more must pay unemployment insurance from 01 January 2015	7
Guidance on 2014 PIT finalization	8
PIT finalization for residents who arrive in middle 2014	9
Foreign Contractor Withholding Tax (“FCWT”)	9
Withholding tax for goods purchased from foreign contractors with warranty terms	9
Regulation on auditing the financial statements of the foreign contractors paying tax under the hybrid method	10
Import Export Tax	10
VAT refund for EPE having trading activities	10
Guidance on notification of the processing contract annexes	11
Procedure and documents for tax refund of prioritized companies	12
Recommendations of General Department of Customs relating to temporarily exported – reimported products for warranties	12

NEW DOCUMENTS

Amendments to certain regulations on Corporate Income Tax (“CIT”), Value Added Tax (“VAT”), and Personal Income Tax (“PIT”)

On 12 February 2015, the Government issued Decree No. 12/2015/ND-CP providing detailed guidance for Law No. 71/2014/QH13 amending some articles of the tax laws and amendments for some articles of certain tax decrees. Several remarkable points provided in the Decree are as follows:

- Remove the 15% cap on advertising and promotion expenses.
- Amend and supplement the definition of “new investment project”. Accordingly, new investment projects eligible for tax incentives must be granted with Investment licenses or certificates of investment or permission for investment by the competent State Bodies as regulated in the law of investments.
- Provide guidance on tax incentives for certain new beneficiaries, i.e. investment projects the

Abandon the regulations on filing the lists of output and input invoices in VAT declaration, Special Consumption Tax (“SCT”) on a monthly and quarterly basis.

- Provide consistent regulations on the exchange rates used for conversion of revenues, expenses, taxable prices, and taxes paid to the State Budget in foreign currency. Provide detailed guidance on the exchange rates for tax purpose on exported and imported products.



- Abandon the late payment interest rate of 0.07% per day on outstanding tax liabilities for the submission by 90 days later than the statutory deadline. From 01 January 2015 onwards, the late payment interest rate will be at 0.05% per day on outstanding tax liabilities.

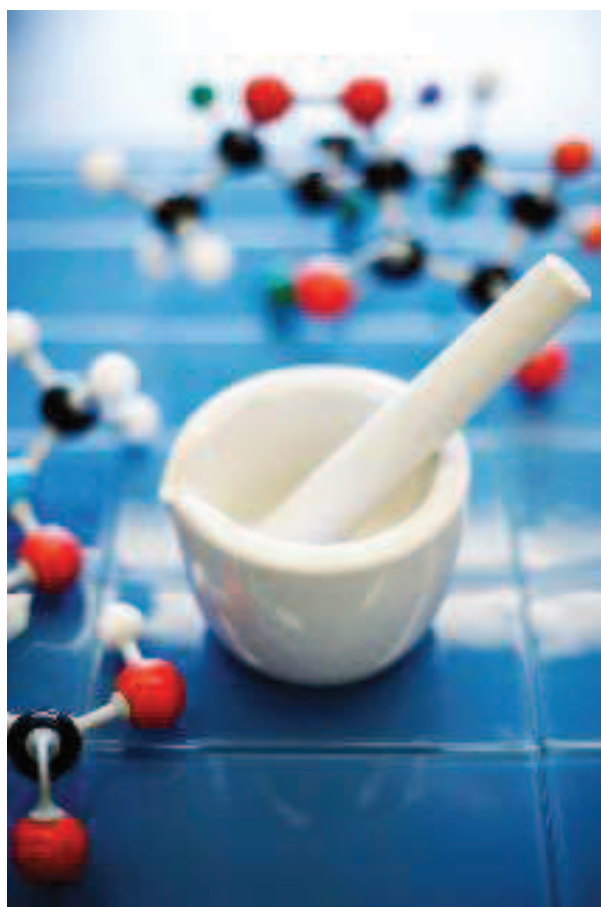
The above information was updated in February 2015 Deloitte Tax Alerts

Companies who are not credit institutions are not allowed to use cash in loan borrowing, lending, and loan repayment transactions

On 29 January 2015, the Ministry of Finance issued Circular No. 09/2015/TT-BTC guiding companies' financial transactions as regulated in Article 6, Decree No. 222/2013/ND-CP dated 31 December 2013 of the Government on cash payments. The Circular guides on acceptable forms of payments in some transactions of capital contributions, sales and purchase, transfer of capital to other companies; non-banking borrowing, lending and loan payments. Accordingly, when companies carry out the transactions of capital contributions, sales and purchase, transfer of capital, borrowing, lending, and loan

repayments among themselves, only the following forms of transactions are allowed: cheques, payment orders – remittances, and other non-cash payments as regulated.

Transactions of capital contribution, sales and purchase, transfer of capital to other companies in forms of assets, transactions of borrowing, lending and loan repayments among themselves in forms of assets, debt offsetting, debt transfer shall not be regulated under this Circular but the regulations on corporates.



GUIDING DOCUMENTS

Corporate Income Tax (CIT)

Guidance on determining the deductible expenses for CIT purposes

On 21 January 2015, the General Department of Taxation issued Official Letter No. 234/TCT-DNL providing guidance on determining the deductible expenses for CIT purposes, in which:

- Those parent companies owning 100% capital of the subsidiaries which are in loss position (except the loss determined in the business plan before investment) can make provision for long-term financial investments in accordance to Circular No. 89/2013/TT-BTC, which shall be treated as deductible expenses for CIT purposes.
- In case the company has incurred expenses in the stage of preparation for investment, such as: exploration, assessment, planning but the project is then considered inefficient and thus, disapproved, it shall be deemed as not incurring any revenue and such expenses incurred by the project do not correspond to the taxable income of the company. On the other hand, these expenses are not incurred due to force majeure. Therefore, the company cannot include them in its deductible expenses for CIT purposes.



Tax incentives for the expanding investment project in industrial zones, operating after 2013

In response to enterprises' queries, the General Department of Taxation issued Official Letter No. 216/TCT-CS dated 20 January 2015 on CIT incentives.

Accordingly, in case that the company have expanding investment project registered before 01 January 2014 but operating from October 2014 and this project can meet all the criteria to determine investment expansion which is prescribed in CIT law and its guiding documents, the company shall be entitled to CIT incentives for the income incurred from the expansion as follows: Applying the same tax exemption/reduction period on the additional income from investment expansion as those on new investment projects in the same area and industry subject to CIT incentives (not entitled to the preferential tax rate).

Guidance on determining the time of CIT deficiency declaration in 2013

As per the guidance in Official Letter No. 596/TCT-PC dated 12 February 2015 issued by the General Department of Taxation, the point of time when wrong declaration occurs, leading to lack of CIT amount (the act of tax deficiency) is the day after the last day of the tax submission deadline. Thus, in case the financial year of enterprise matches with the calendar year, the timeline of 2013 CIT finalization is no later than 31 March 2014. In 2013, the act of tax deficiency of taxpayer would be penalized based on the Law No.21/2012/QH13 amending and supplementing certain articles of the law on tax administration and Decree No.129/2013/ND-CP provided that the penalty is 20% of the deficiency declaration of tax amount and late payment of tax amount based on the outstanding tax liabilities.



Personal Income Tax (PIT)

PIT finalization for foreigners who have departed

On 27 January 2015, the General Department of Taxation issued Official Letter No. 322/TCT-TNCN providing guidance on PIT finalization declaration of internal-rotation foreign employees.

According to the current regulations, the tax-residents who are foreigners finishing a labor contract in Vietnam must finalize their PIT before departure. However, if they cannot complete the PIT finalization due to time limitation and the company is committed to take the responsibility for the tax liability of the internal rotation employees with the tax authority for the employees before departure, they are allowed to authorize the company to conduct the PIT finalization declaration within 45 days from the departure date.

The labor contracts of 03 months or more must pay unemployment insurance from 01 January 2015

Vietnam Social Insurance issued Official Letter No. 5471/BHXH-BT dated 31 December 2014 providing guidance on collection of social insurance from 01 January 2015. Accordingly, employees who have labor contracts for more than 3 months are compulsorily subject to unemployment insurance contributions (UI) except for those are receiving pension salary and those are house maids. UI contribution rates are in accordance with the current regulations (employees pay 1% of the monthly wage, companies pay 1% of the monthly wage fund of laborers contributing to UI). The salaries used as a base to calculate UI contributions are those used for compulsory social insurance calculation but must not exceed 20 months of the area minimum wage (the area minimum wages are under the provisions of Decree No. 103/2014/ND-CP).



Guidance on 2014 PIT finalization

On 02 March 2015, Hanoi Tax Department issued Official Letter No. 7851/CT-TNCN providing guidance on 2014 PIT finalization and tax code for dependents with some notable contents as follows:

Tax exemption to some income, subsidies and allowances

The housing benefits which are constructed by employers and provided free to the employees working in the industrial parks; residence constructed by employers in economic zones and areas with difficulty in economic and social conditions, areas with extremely difficult economic conditions, which are provided free of charge to employees;

Allowances and subsidies summarized in the List of general allowances and subsidies enforced by the competent government bodies shall be the basis for determining taxable income from salaries and wages, promulgated in Official Letter No. 1381/TCT-TNCN dated 24 April 2014.

Conversion of income in case of applying hypothetical tax and housing norm

If employers apply the policy of hypothetical tax and housing norm, income to be converted into taxable income shall not include the amounts of hypothetical tax and housing norm withheld;

Notes in tax code registration for dependents

To register tax codes for dependents, the taxpayer shall declare the full information of the dependents for in 2014 in Appendix 05-3/BK-PIT upon finalization; or in the Summarized registration list of dependents (form 16/TH) in case of requesting for tax codes before submitting the PIT finalization;

For those new dependent arising from 01 January 2015 onwards, taxpayers using form 16/TH to declare; however, it will be made after the deadline of 2014 PIT finalization.



PIT finalization for residents who arrive in middle 2014

On 25 December 2014, Ho Chi Minh City Tax Department issued Official Letter No. 11564/CT-TTHT providing guidance on PIT finalization for residents who arrive in middle 2014.

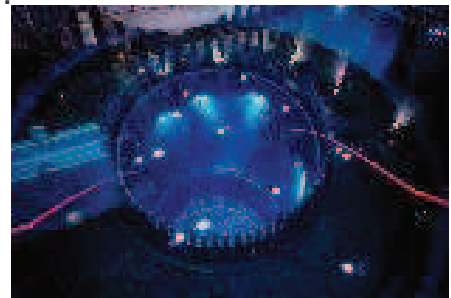
Based on Circular No. 111/2013/TT-BTC, Circular No. 156/2013/TT-BTC, and Circular No. 119/2014/TT-BTC of the Ministry of Finance, in case that the company's foreign employees who are citizens of countries, territories that have signed agreements with Vietnam on avoidance of double taxation and prevention of tax evasion with respect to taxes on income arrive and work at the company from middle 2014 to 31 December 2014 and satisfy the condition of a tax resident of Vietnam in tax year 2014, the Company is responsible for declaring and withholding PIT for the amount of money the company actually paid to the employees from the month those employee arrive at Vietnam. At the end of the year, these residents aggregate worldwide income from the arriving day at Vietnam until 31 December 2014 to declare and finalize with the tax authorities.

Foreign Contractor Withholding Tax ("FCWT")

Withholding tax for goods purchased from foreign contractors with warranty terms

Following the instructions in Official Letter No. 241/TCT-CC dated 21 January 2015, regarding the contractor contract governed under the provisions of Circular 134/2008/TT-BTC, the General Department of Taxation determine the FCWT obligation for the case of goods supplied together with warranty terms as follows:

- The income generated by foreign contractors in Vietnam when providing goods accompanied warranty is taxable at the tax rates applicable to commercial activities.
- VAT has been charged at the import stage on the value of goods and the value of the warranty, so that the VAT obligations of the foreign contractor do not arise in this case.



Regulation on auditing the financial statements of the foreign contractors paying tax under the hybrid method

On 30 January 2015, the General Department of Taxation issued Official Letter No.378/TCT-KK providing guidance on auditing financial statements for foreign contractors paying tax under the hybrid method. Accordingly, in case the foreign Contractors, Sub-contractors are registered with the tax authorities and are approved to apply VAT on credit method and CIT at the percentage of its taxable revenue as mentioned above, they must prepare financial statements together with Balance Sheet and Notes to the financial statements to submit them to the authorities. The government encourages foreign Contractors to have their financial statements audited for tax purposes; however, the Official Letter confirmed that the audit for the foreign contractors is not mandatory.



Import Export Tax

VAT refund for EPE having trading activities

On 14 February 2015, the General Department of Customs issued Official Letter No.1563/GDC-TXNK providing guidance on VAT refund for EPE implementing the right to import, as follows:

- The period prior to the effective date of Circular 219/2013/TT-BTC on VAT (i.e., 01 January 2014), when selling goods domestically, EPEs do not declare output VAT, hence, the local tax authorities have no basis to refund the VAT amount paid by EPEs at the import stage. Accordingly, for those returns registered prior to 01 January 2014 but have not been declared, credited, refunded for VAT purpose with the tax authorities yet, the customs authorities shall refund overpaid import VAT for enterprises as prescribed;

- For those returns registered after the effective date of Circular 219/2013/TT-BTC (after 01 January 2014), EPEs shall credit the tax under the provisions of Point 6, Article 3, Circular 219/2013/TT-BTC. Accordingly, EPEs establish branches to exercise the right to import and simultaneously, record separate accounting books and declare output, input VAT for the activities of the branches.

Guidance on notification of the processing contract annexes

Under the provision of Point 2, Article 22, Circular No.22/2014/TT-BTC dated 14 February 2014 of the Ministry of Finance, processing enterprises have to notify the annexes prior to the expiry day of the contract, if extension is required.

However, in the case that the processing contract expires but certain products have not been exported yet, if the company is able to explain the legitimate reasons and sign processing contract annexes with overseas partners to adjust the delivery duration, the company is allowed to undertake the procedures of notifying the annexes to processing contract.

The above is the guidance of the General Department of Customs in Official Letter No.754/GDC-GSQL dated 28 January 2015.



Procedure and documents for tax refund of prioritized companies

According to Circular No. 1457/BTC-TCHQ guiding managing tax refund for prioritized companies issued by Ministry of Finance on 29 January 2015, tax refund dossiers for prioritized companies are stipulated at Article 119, Circular 128/2013/TT-BTC dated 10 September 2013 issued by Ministry of Finance.

In case prioritized companies' dossiers do not include test results on declaration forms (owing to the exemption from physical inspection of goods under the provisions of Circular No. 86/2013 / TT-BTC), the Customs authorities will base on details under the provisions of Point C, Clause 8, Article 127, Circular 128/2013/TT-BTC to transfer the file from the subject of tax refund first - check later to check before-tax refund later as prescribed.

Recommendations of General Department of Customs relating to temporarily exported – reimported products for warranties

Relating to temporarily exporting – reimporting products for warranties, in case of no warranty term article is stated in the import contract; GDC has discussed with Ministry of Industry and Trade about some management measures as follows:

1. In case the contract has warranty terms, Border customs department relies on such terms to conduct temporary export – reimport procedures for businesses.
2. In case the business can present contracts with additional warranty terms, Border customs department rely on such term to conduct temporary export – reimport procedures for businesses.



3. In case the general warranty terms are on the Web page and shown on the contract, Border customs department rely on such terms to conduct temporary export – reimport procedures for businesses.
4. For other cases (excluding the case at point 1, 2, 3 mentioned above), only in case of being able to present the approval from the Ministry of Industry and Trade, the customs office will conduct temporary export – reimport procedures for businesses.

Above is the content of Circular No. 1118/TCHQ-GSQL dated 06 February 2015 issued by General Department of Customs sent to Ministry of Industry and Trade.





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